IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

S.B.CIVIL RESTORATION APPLICATION NO.171/2006.
IN
S.B.CIVIL FIRST APPEAL NO.279/2003.

Sanwar Mal & Another. **VERSUS** Smt.Kamla & Others.

12.09.2006.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.O.P.Mishra on behalf of
Mr.M.M.Ranjan, for the applicant.

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This is a restoration application which has been filed for restoring the appeal which has come to be dismissed on account of the peremptory order passed by this court on 01.08.2005.

On 01.08.2005 three weeks time was allowed to the appellants to file process fee and notices on the correct addresses of the unserved respondents and it was ordered that in case the said notices with correct addresses are not filed, the appeal shall be dismissed for non-prosecution without reference to the court.

As per the office report dated 02.09.2005 process fee and notices were filed but on 06.10.2005, the office has reported that the notices could not be issued because the fresh addresses had not been filed by the appellant. Therefore, in view of the office report dated 06.10.2005 the matter came to be listed before the Deputy Registrar (Judl.) as the peremptory order dated 01.08.2005 had not been complied with. After the office report dated 06.10.2005 there is a marginal note dated 26.10.2005 which reads process fee and notices filed on 10.08.2005.

In this background, the matter was placed before the Deputy Registrar (Judl.) on 03.12.2005 but none appeared on behalf of the appellant before the Deputy Registrar (Judl.). On 03.12.2005, the Deputy Registrar (Judl.) passed the following orders :-

> "As per office report dated 6.10.05 notices with fresh address have not been filed and S.R. inward Clerk (Civil) also made a report on 26.10.05 and 3.12.05 that PF and notices filed on 10.8.05. But there are other three notices with fresh address in duplicate for NP No.1, 2 & 4 also lying in the file without Talwana and inward number also shown on notices. It also reveals that inward number which was marked on earlier Talwana and notices are also marked on other notices.
>
> C.C. and S.R. Inward Clerk are directed to report about the filing of notices clearly.
>
> Put up before undersigned on 13.12.05."

After the above order was passed by the Deputy Registrar (Judl.), the matter was placed before the Deputy Registrar (Judl.) on 13.12.2005 and on the said date also, none appeared on behalf of the appellant. In the margin a note has been put dated 10.12.2005 which reads as follows :-

> "P.F. & notices with fresh address not filed. P.F. & notices with old address filed on 10.8.05 thereafter no any notices filed."

There is another note below the aforesaid note which reads as under :-

> "P.F. notices filed on 10/8/05 but fresh address not filed."

After the above notes have been put, the matter came up before the Deputy Registrar (Judl.) on 13.12.2005 and

following order was passed by the Deputy Registrar (Judl.) on the same day:-

> "The report of C.C. & Inward Clerk make it crystal clear that only on 10.08.05 PF/Notices were filed on old address but thereafter no PF/Notices have been filed.
>
> Hence compliance of peremptory order dated 01.08.05 have not been made as yet and matter deserves to be dismissed as such.
>
> It is a matter of worry that how without knowledge of C.C. and Inward Clerk notices on fresh address without P.F. but on old inward numbers, has come on the file. To prevent it in future, the AOJ (Civl) is directed to take urgent necessary steps.
>
> Now this appeal stands dismissed in view of the peremptory order dated 01.08.05 as compliance has not been made."

After the above order was passed on 13.12.2005, the present misc. application has been filed for restoration of the appeal. The said misc. application has been filed which is barred by 35 days delay, as such, an application under 5 of the Limitation Act has also been filed.

In this misc. application, it has been submitted that the appellant filed the correct notices with correct address on 10.08.2005 as well as another set with old address of the unserved respondents. It has been submitted that the appellant is not guilty of the non-compliance of the peremptory order dated 01.08.2005 as such in the interest of justice the peremptory order dated 01.08.2005 should be recalled and the appeal of the appellant be restored to its original number.

I have considered the above application as well as the note which has been put by the Deputy Registrar (Judl.) dated 13.12.2005. I have also perused the two sets of notices one

with the purported correct address and another set which was filed along with process fee and *fard talbana* on the old address. I am in agreement with the findings of the Deputy Registrar (Judl.) who has recorded that in fact as per the record it appears that on 10.08.2005 only process fee and notices on the old address had been filed with *fard talbana* and process fee which has been entered at Serial No.15734 dated 10.08.2005. It is not understandable as to how fresh set of notices came to be filed without any forwarding letter or *fard talbana* and entered on the same Inward No.15734 dated 10.08.2005. There is no seal of the same having been presented by any Advocate bearing the signatures of the stamp reporter on these notices. This is corroborated by the fact that concerned Clerk made a report dated 06.10.2005 that notices could not be issued as the same were not filed with correct address. In fact, if the said notices had been filed with the correct address on 10.08.2005, there was no question of the aforesaid noting having been put by the concerned Clerk on 06.10.2005. It, therefore, becomes apparent that the appellant has tried to manipulate the record and has placed on record the second set of notices which were filed subsequently and an effort was made to show that second set of notices had in fact been filed on 10.08.2005 and Inward No.15734 dated 10.08.2005 was also affixed on the said second set of notices. Any paper filed has to be accompanied by the *fard talbana*. It is also a fact that presentation seal showing the name of the concerned Advocate is also put on the forwarding letter or *fard talbana* and the Inward Number and the date fixed on the same as is found on the endorsement on the *far talbana* accompanied with the notices filed containing the old address is not there on the set of notices containing the fresh address.

From the above, the follows facts emerge:-

(i) Process fee and notices containing the old address of the respondents were filed on 10.08.2005 and entered at Serial No.15734 which were presented by Shri D.Saraswat, Advocate on 10.08.2005.

(ii) On 02.09.2005 the concerning Clerk reported in the margin that P.F. and Notices have been filed on 10.08.2005.

(iii) The ordersheet dated 05.09.2005 reads “In view of order dated 01.08.2005 P.F. and notices has (have) been filed”.

(iv) Thereafter there is seal affixed “P.F. and Notices has been filed as per report. Now issue notices and put up on 30.11.05.”

(v) On 06.10.2005 the concerning Clerk has put a note “Notices could not be issued because fresh address not filed”.

These facts go to show that when the file containing the notices for being issued was received on 06.10.2005 it only contained the notices with the old addresses filed on 10.08.2005 and entered at Serial No.15734.

(vi) Then there is the notesheet dated 07.10.2005 that in terms of the office report dated 06.10.2005 and in view of the court order dated 01.08.2005 the case be listed before D.R.(Judl.) on 28.10.2005 with report of S.R. and Inward Clerk.

(vii) It is after the aforesaid noting that the Deputy Registrar (Judl.) on 03.12.2005 before whom the

matter was placed has noticed the two sets of notices and called for the report.

(viii) After the order 03.12.2005 the concerning Clerk and Stamp Reporter have clearly given their report that notices filed only on old address and not correct address.

(ix) The Deputy Registrar (Judl.) after enquiry and perusing the reports of C.C. and S.R.(Civil) came to the conclusion that on 10.08.2005 only notices with old address were filed and the notices with fresh address were filed subsequently. Hence, the appeal was ordered to be dismissed in view of non-compliance of the peremptory order.

The appellant in this petition has stated that "P.F. and notices with correct address as well as old address of the unserved respondents were filed as per the order of the court dated 01.08.2005.

From the facts mentioned above, the above statement cannot be accepted. There was no occasion for the applicant if he had the correct address to have filed the notices on the old address. It is only these notices filed on the old address which have been filed with the *fard talbana* and entered in the inward register and presentation made. The notices containing the fresh/correct address were not filed along with any *fard talbana* or forwarding letter. They bear the same inward number and date, which is not possible. They do not bear in seal of presentation or signature of the Stamp Reporter who received them. No affidavit of the person who presented them has been filed. The affidavit which has been filed along with the application is not of the person who presented the paper, as is evident from the endorsement made on the *fard talbana* by the Stamp Reporter.

The Court would have probably restored the appeal if an applicant was to come with clean hands and submit a genuine reason for the default or even plead oversight but trying to overreach the court in this manner cannot be condoned.

In view of the above, this restoration application as well as the application under Section 5 of the Limitation Act stand dismissed.

(DALIP SINGH),J.

Solanki DS, Jr.P.A.